[For information on the barawwa, the act of banishing from the group, as a form of legal document, see Categories 675 and 681.]

423 society. Private ownership of land with sovereign rights
* [613] over it is now the normal practice in al-Qasr. Rights are
178 held by the family head, the shaib. If the family head is
[596] deceased, land tenure rights are held jointly by the sons.

In the area beyond the plateau, in the extreme
[184] south of al-Qasr, land rights to grazing and water still are
* [613] associated with lineages. But here agriculture is impossible.
[241] The type of rights over the land varies with the method by
which it is exploited. The southern and coastal sections of
[433] al-Qasr represent the old and the new, the pastoral traditional
mode of production and the modern agricultural cash economy.
[233] But, as noted, of the total population only a few Bedouins
are actually engaged in pastoralist activities. Hence, tribal
tenure rights, in general, are not overly important at this
time. Not too long ago they were, and many cases in the recent
• [671] history of Bedouin customary law relate to conflicts over land
and water in the southern region. The Bedouins say that
[178] traditionally no lineage could use the pasturage or water of
* [613] another without some agreement, usually of long standing,
[233] made beforehand. Now, they say, permission is not needed.
[675] In the old days, these agreements were made between lineage
representatives, not individuals per se. Today, the grass
178 and water in the southern zone are claimed, though not in a
423 legal sense, by the families using them: the rights of
usufruct over the land are closer to rights of sovereignty

121 moral community, we cannot proceed to a discussion of the
571 internal and external systems of political relations.
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577 As a result of the socialization process, and through
181 relations with other members of the family, an individual
[867] comes to recognize that his conduct is measurable by certain standards of, what is considered by the group to be, good and bad, right and wrong. In al-Qasr, such standards are intrinsically correct, or "decent" as the Bedouins say; obedience to the authority representing these standards is interpreted as a "duty." The authoritative aspect of the role of household [596] head (shaib al-bait), and the moral obligations which it represents, emerge from and reinforce values and structural arrangements central to Bedouin social order, namely, respect for authority and devotion to social groups, the two basic elements of morality defined by Durkheim (Parsons 1937:382-385).

577 The value placed upon social order, and the structural
571 mechanisms for insuring its realization and extension--kinship,
181 residence and contract--inform an authority structure which
182 ranges between filial piety at the family level and a set of legal norms at the level of the external political system. The fact that the Bedouins of al-Qasr are interested in integrating a larger population into their authority structure means that a common value is operative in the range of it; also that one sphere of authority will tend to merge into another. [593] Hence the father-son authority relation has importance for
• [671] the strength of Bedouin customary law in the desert. The

582 171 and, the individual has been socially conditioned to prefer his father's brother's daughter.

582 183 All of these explanations are as plausible as they are obvious. They are, in fact, the same explanations which the Bedouins themselves offer for their marriage ideal. But one cannot help noticing that the explanations offered actually concern an ideal in Bedouin social behavior, and not a practice. Theories showing the logic of parallel-cousin marriage are placed along side the fact that this type of marriage is statistically atypical.

582 428 [691] If, as Islamic Law decrees, the daughter did inherit some share of her father's property, then parallel-cousin marriage as an attempt to keep land in the tertiary group would be logical. But we know that usually the sons inherit all of the father's property, Islamic Law to the contrary (Levy 1957:245-246). In this case, parallel-cousin marriage can only be seen as an ideal which functions side by side with the other ideal of a girl's right to inherit.

582 171 Barth (1954), and Murphy and Kasdan (1959) have stressed the political advantages which attach to parallel-cousin marriage in the context of factional struggle. The general idea is that political differentiation between collateral branches of the lineage structure is intensified and political autonomy enhanced by the practice of turning affinal bonds inward. Parallel-cousin marriage then has the opposite

*613 segment. He acts in concert with other 'awaqil (plural of
554 'aqila) of the tertiary segments of his secondary group when
571 lineage matters call for decision-making at this level.
*613 Tertiary segments are replicate groups descended from one
571 ancestor, they operate with a common ideology pursuant of
183 common interests and goals. As we shall see, this common
675 ideology is expressed in a kind of code, or contract, which
all members of the group swear to uphold and abide by according
to the principle of blood responsibility. Tertiary codes in
[181] al-Qasr are a reflection and an affirmation of a wider system
of values and norms which bind the Bedouins of the Western
Desert together into a political system. This wider normative
• [671] system is expressed in the customary legal system of the
Bedouins known as 'awaiyid Awlad 'Ali ("the customs of the
Awlad 'Ali tribe").

*613 The primary duty attached to the office of 'aqila is
578 the regulation of conflict. It is worth noting here that
571 conflict regulation is not equivalent to conflict resolution.
554 The latter process carries with it the intimation that the
causes of conflict have been treated and resolved, that conflict
has been eliminated. Nothing could be further from the truth
in a segmentary society where the various segments actually
constitute conflict groups; consequently, conflict between
groups or individuals who represent groups may be contained
but never forgotten. Conflict is an ongoing process among

*613 554 578 692 Conflict regulation, in the formal sense, is the province of the 'aqila. All complaints should be taken before the 'aqila. In al-Qasr, every individual has certain rights, and when any of these rights are infringed upon he may demand a redress of wrongs: he demands his rights, or exercises haqq al-'Arab ("the right of the Arabs"). The haqq al-'Arab is opposed to the haqq Allah, "the right of God," which concerns crimes against religion (i.e., wine-drinking, apostasy). The dichotamy represents private claims over against the claims of a religious state which is characteristic of Islamic society. [688] In al-Qasr, crimes against religion have never occurred, and if they did they would be handled in Marsa Matruh by the local shaikh ("holy man").

*613 554 69 The litigation process is initiated when an individual appears before his 'aqila with a claim, and the statement: "I do not wish so-and-so to take any of my rights." The 'aqila first attempts to persuade each party "to return to the path of the good," to come together and to cease quarreling. This type of moral persuasion is preliminary to a full court-hearing in which both parties will appear with witnesses before their respective 'awaaqil, and other "third parties" who aid the 'awaaqil in their decision. The decision reached by the court is morally binding upon both parties. According to recent [671] [178] innovation in Bedouin customary law, the details of the litigation and the decision reached by the court are to be recorded

*613 554 69 [671] [178] on paper in triplicate, one copy going to each litigant and a third copy to the chief of police of the Marsa Matruh sector. In practice, though, a copy usually goes to the litigants, but not to the chief of police (who had not a single Bedouin court case in his files).

*613 695 692 [671] As is not the case in Islamic law, in Bedouin customary law the decision of the judge may be appealed. The system of appeals may even function at the level of familial authority, i.e., the son may, in theory, appeal a ruling by his own father. The Bedouins insist that this is an important right of every man. In the situation where a man wishes to appeal a decision of his own 'aqila, he will generally take his claim to another 'aqila of his secondary group. When an appeal is to be made, it is done with the permission of the 'aqila who rendered the original decision. The one who appeals his case does so with the understanding that the decision returned by the court of appeal will be final and binding. Further, if [681] the court of appeal concurs with the findings of the original court, the plaintiff pays a double fine (twice the original fine), and also pays his own 'aqila an expiation fee (kubaara).

69 648 [682] [685] The Egyptians have preferred to leave the Bedouins of al-Qasr to settle their own disputes except in the more serious criminal matters. Police from Matruh will enter homicide cases and those conflicts over property rights which threaten to explode into tribal warfare. But these types of conflict have

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The boundaries of the Bedouin political community may be defined so as to include all of those authority groups which operate in accordance with the recognized legal code of the Western Desert. This code is referred to as 'awaiyid Awlad 'Ali, i.e. "the customs of the sons of 'Ali." The members of the Awlad 'Ali tribe identify with each other as a group. They recognize their common heritage and speak of "the Awlad 'Ali as one." But more importantly, the Awlad 'Ali represents a political community because they are "prepared to regulate their differences by means of decisions accepted as binding because they are made in accordance with shared political norms and structures" (Easton 1959:229). Recalling the discussion of familial authority and internal and external systems of authority relations, we may think of the Bedouin political community as a composite of authority or jural groups "within which there are a moral obligation and a means ultimately to settle disputes peaceably" (Middleton and Tait 1959:9).

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In al-Qasr, political order and the articulation of political relations between secondary corporate groups depend upon something besides structural and ideological uniformities. Although blood-revenge and feuding do not take place at the internal system of authority relations, they are common means of controlling the distribution of authority and power between secondary units. Though these mechanisms or sanctions are considered "the right of the Arabs," since they do threaten

peace and security in the desert they are discouraged by means of the moral and legal norms expressed in the 'awaiyid, or law of the Bedouins.

Conflict regulation between secondary groups is the function of the 'awaaqil who act as legitimate representatives in terms of the rawaabit, and as legitimate judges and decision-makers in terms of the 'awaiyid. Not all conflict in the external political system is, in terms of our structural levels, between secondary authority groups, but seldom is any group larger than the secondary unit mobilized for political action. In other words, even where we note that conflict is between two primary units, i.e., the 'Aishaibat and the Kamailat, there is probably, in fact, political action taking place between two secondary groups within the respective primary groups. However, there always exists the very real possibility that greater conflict will be generated involving primary and even tribal units.

In the next section of this chapter, I will discuss Bedouin law and sanctions within the framework of the lineage structure and the authority levels at which they operate. The following section will further illustrate the legitimacy and dynamics of authority and structure in Bedouin society.

Law and Political Order: 'Awaiyid Awlad 'Ali

671 [672] A "holy man" in al-Qasr, who has intimate knowledge of both the Quran and Bedouin law, has this to say on the subject of the 'awaiyid Awlad 'Ali:

671 171 The Sharii'a (Islamic Law) was given by God, and it guides man concerning what is good and what is bad: it is for all Muslims. The 'awaiyid was made by man for the Bedouins: it is for settling problems and evaluating damages. The 'awaiyid is natural, made by man and the Awlad 'Ali for settling the problems of the Bedouins. It is different from the Sharii'a. The Awlad 'Ali made the 'awaiyid, not the ashraaf ("holy men"); but the "holy men" approved it. The 'awaiyid agrees with the Sharii'a, but not in everything for it is not from the Sharii'a. Shari'it Muhammad ("the law of the Prophet") is one thing and the 'awaiyid is another. The Sharii'a says an eye for an eye, a tooth for a tooth, and a life for a life: the 'awaiyid also says an eye for an eye, a tooth for a tooth, and a life for a life, but in a different way: the 'awaiyid involves money. The 'awaiyid judges a situation; the dhabiiha ("blood sacrifice," usually a lamb as an expiatory fee) and the fine are paid and the problem is solved . . . The 'aqila is better than the government for settling problems in the desert. The government may put a man in prison, and if he dies there you will be responsible to his father and brothers. There is a more liberal judgment here in al-Qasr, and God prefers that we settle our problems through peace . . . If a man dies in prison, it is no sin before God but the Bedouins consider it a sin.

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671 At the present time, the customary law of the Awlad 'Ali prevails in al-Qasr, and, I suspect, this body of legal and moral norms will be the basis for Bedouin social and political action for some time in the future. In any case, it furnishes us with a base-line from which any future studies of social

change in al-Qasr must proceed.

Bedouin law should be considered within its historical context, especially as it has reference to the Maliki school of Islamic Law. The Maliki school, or "rite," (madhhab) of law is considered to be the most conservative interpretation of the doctrine of the Prophet Muhammad. Therefore, the Maliki school is thought to reflect the society and tribal traditions of pre-Islamic Arabia more dependably than any of the other three schools of law. For instance, the Maliki school, in the domain of family law, stresses the importance and the primacy of agnate rights and claims. This is especially so in matters of inheritance: the law states that in the absence of agnate heirs the property of the deceased passes, not to female survivors but, to the central treasury of the State. This single legal aspect helps us to understand the Bedouin practice of disallowing the female to inherit and should be a consideration in any study of Bedouin succession rules.

Maliki Law was introduced into North Africa during the ninth century, and became the official legal doctrine of the Berber dynasties. It was first taught in this part of the world, probably, by Yahya ibn Yahya, a student of Malik ibn Anas, the founder of the school. Murray (1935:313) presents a valuable legal document from the Western Desert in which the name "Yahya" is frequently cited as the authority

175 for legal interpretation. For instance: "We are also told
•671 by Yahya that (the Caliph) Mu'awiya ibn Sufian said that a
177 wound on the body should be assessed at half the value of
671 that wound on the head or face" (1935:324). Maliki law,
177 derived in large part from the Bedouin traditions of Arabia,
may be seen to characterize the legal norms of the tribal-based
social structure in the Western Desert. The Bedouins of al-
[428] Qasr themselves claim that they are within the bounds of
[562] Islamic Law when they deny the female the right to inherit,
though they do have other, and more secular, justifications
for the practice.

671 As we have already noted, in the above quote from the
182 "holy man" of al-Qasr, the Bedouins feel that the 'awaiyid
648 can succeed where governmental law will fail. They say that
"the government does not understand the problems of the
Bedouins," that "government troops cannot function in the
desert." They feel that they need the 'awaiyid for the sake
of political order itself: "If the Bedouins did not have
the 'awaiyid, they would eat each other. The 'awaiyid is so
important that a man who commits a wrong in town will lie
to the government, and then dutifully return to the tribe for
Bedouin justice."

[656] In 1933, the government "abolished" the 'awaiyid
and insisted that the Bedouins settle their difference in
the civil courts in accord with Egyptian law. According to

671 the Bedouins, the government soon discovered their own error,
182 for they were unable to effectively manage group and tribal
648 political relations: "They (the government) found out that they could not solve murders in the desert. They would arrest the killer but the trouble continued between families (i.e. feuding went on). There were more killings instead of less, and, finally, the government asked us to return to the 'awaiyid because it alone can solve murders in the desert." I was unable to document the claim that the government had "abolished" the 'awaiyid in 1933, but a number of officials who worked at the Governor's Office in Marsa Matruh said that it was true.

671 In al-Qasr, and in the Western Desert in general,
641 adherence to law and political order rests upon the conviction
577 that each individual and territorial group have guaranteed
571 rights which are related to honor and property. A violation
554 of any single man's honor or property may easily be interpreted, according to the principle of collective responsibility, as an offense against the rights of a group. And in this sense, legal and moral violations in Bedouin society are relative to the structure of interrelations, and they must be regulated with reference to the various levels of the authority structure.

181 Bedouins place a high value on political order, but
641 also on the idea that political order can only be guaranteed
578 through a man's willingness "not to allow another to take any
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*613 682 impossible within the corporate group. Middleton and Tait (1958:19) have generalized on this point, and Wagner (1940: 218) has been very explicit: "When a breach of law occurs within a given group (lineage, sub-clan, or clan) and the nature of the offence is such that it affects those interests which are specific to the group and not further divisible, a restoration of the breach by compensation is obviously impossible, as it would necessitate the splitting of the group into two units . . . " The Bedouins avoid division in [672] such cases by holding the whole secondary group responsible for the diiya, and usually the share of the diiya which would be forthcoming from the killed man's tertiary segment is excluded from the total payment. It seems that either the Bedouins represent an atypical case, or Africanists have failed to make a sharp and analytical difference between the blood-vengeance grouping and the group which actually shares in the paying and receiving of blood money.

•691 [682] [626] Bedouin law and political order, then, center on the institution of blood-revenge or retaliation. The payment of compensation as a prevention of blood-feud is a central concern of the 'awaiyid Awlad 'Ali. Murray (1935:313-328) presents a Bedouin legal document "signed with the seals of twenty-two sheikhs testifying to the accuracy of the code" which set forth the main tenets of the 'awaiyid of the Western Desert. I checked the contents of this document with

I checked the contents of this document with my own informants who agreed that it was authentic and represented the 'awaiyid as it should be practiced. Almost the whole of the 'awaiyid refers to the circumstances surrounding the occurrence of killing and the payment of the diiya. The case studies which I present below reflect the 'awaiyid as it was practiced in 1935.

Blood-money is calculated relative to three things: whether or not a killing was premeditated or accidental; the sex of the victim; and whether or not the victim was a freeman or a slave. The full diiya is paid in the case of intentional killing, and three-fourths of this amount is due in the case of accidental killing. The diiya for a woman is one-half that for a man whether or not the killing is intentional. There are no slaves in al-Qasr, only their descendents who are now freemen. In the case where a pregnant woman is killed, the foetus will be examined and should it prove to be a male then the full diiya will be due.

An important mechanism for conflict regulation in the Western Desert is the nazaala, i.e., "the act of taking refuge." If a killing is committed, the killer immediately seeks protection by going to the residence of a neutral third party. The third party, who may or may not be an 'aqila, and his lineage give protection to the whole tertiary segment of the killer. This may involve the actual relocation of the killer's bait to the residence of the protecting group for

682 683 671 Since Bedouin law, and not Egyptian law, still prevails in al-Qasr, personal injury cases must be expedited according to the 'awaiyid lest the greater sanctions embodied in the principle of self-help follow. Sanctioned fines for death and bodily injury are standardized in al-Qasr and in the whole Western Desert. One informant, a rajal khair ("good man") who sometimes adjudicated quarrels, possessed an authoritative paper which listed the injury and ensuing fine prevailing in al-Qasr when I was in the field. Below are the contents of this paper. The comments in parentheses were made by the man as I translated the paper: they were offered as the rationale behind Bedouin law.

[124] [627]

L.E. 400 - for inflicting an injury upon a person which renders him sterile.
400 - for the intentional death of a man with a gun or knife.
400 - for causing the loss of a man's nose, ("Because to cut up a man's nose is to make him ugly.")
400 - for causing the loss of a man's eyes, 200 L.E. for each eye, ("Because without eyes a man can do nothing.")
400 - for causing the loss of a man's ears, 200 L.E. for each ear, ("Because a deaf man cannot work.")
300 - for the death of a man if caused by beating with sticks or stones, ("This is unintentional, for if you really wanted to kill the man you would use a better weapon.")
200 - for the intentional death of a woman with a gun or knife.
150 - for the loss of a hand.
150 - for the loss of a leg.
10 - for the loss of a front tooth, ("Because it is bad for a man's appearance.")
5 - for the loss of a rear tooth.

671 562 Implicit in the 'awaiyid is the assumption that the woman is less responsible for her deeds and something of a weakling. The Bedouins have a proverb which says that "the devil whispers in the ear of the woman." If a woman slays a [682] man, intentionally or accidentally, the diiya is considered 671 as for unintentional killing. Where sex offenses are con- 562 cerned, it makes a difference if the act takes place in the 684 man's (i.e. the husband's) tent or in the desert, and, of course, it makes a difference whether or not it is a case of rape or adultery. If a man finds another man and his wife in his dwelling in the act of adultery, he may kill the man and pay the diiya for unintentional killing. From this diiya, he deducts the amount of the bride-price and 50 L.E. for trespassing. The fine for rape ranges from 10 L.E. to 100 L.E. On the other hand, if intercourse takes place with the woman's consent, the fine is only 5 L.E. or 10 L.E. If a virgin is deflowered, the fine will be 100 L.E., and the man will have to marry her, paying the bride-price asked for by the girl's father and going through the normal procedure for marriage. Where offenses involve unmarried women, all fines are paid to the father. In cases concerning married women, fines go to the husband. According to the [586] Bedouins, it would be a great dishonor to the man's family [558] if the husband were not to divorce his wife after it becomes known that she has been promiscuous. They said that if a man

671 They said that if a man 206
562 insisted on keeping a promiscuous wife, his family would
684 "write a barawwa aginst him." I heard of no sex offenses in
681 al-Qasr while I was there.
[114]

671 The penalty for stealing, according to the 'awaiyid,
685 is that the thief shall pay compensation, by himself, in the
amount of four times the value of the stolen object. On the
* [613] other hand, if the thief is a poor man, he will pay thrice the
value of the stolen object and the remaining fourth will be
paid by his lineage.

671 The 'awaiyid recognizes the territorial claims of the
685 lineage. Disputes arising over conflicting claims to land
*613 and wells are handled at Bedouin courts in much the same way
578 as personal injury cases are, with one exception. Usually, a
[554] larger number of elders and rajal khair will be consulted in
an advisory capacity by the 'awaaqil handling the case. The
'awaaqil consider the specific history of a particular piece
of land or well (for instance, each well is known by its own
name), and determine the ownership in accordance with the
testimony of elders and individuals of high social status.
Most of the problems over land and water rights in al-Qasr
have reference to what is still considered lineage-owned
685 territory in the barley-and-pasture sector. In the 'izba
578 sector, conflict over land ownership rights, since they are
648 rights which are registered with the government, is settled
in the Egyptian court of law. Only one such case came up while

695 602 613 671 untruthfulness and he loses his claim. According to the 'awaiyid, the number of supporters required in a homicide or wounding case is fifty; in a case involving the rightful ownership of land or a well the required number is twenty-five; in a case of conflicting claims over a camel, five relatives must swear in support of the claimant; and in matters concerning smaller animals, such as sheep, the number of supporters will depend upon the number and price of the animals. But, of course, the number of supporters will always be relative to the size of the groups involved, and so the 'awaiyid is not always followed to the letter of the law.

695 692 The time and place of the oath is fixed by the 'awaaqil adjudicating the given case. It is administered either at the tomb of a "holy man," or at the mosque in Marsa Matruh, and always on a Friday, the Muslim Sabbath. There is a standard text to the oath and this is given in the instructions of the 'awaaqil to the litigants. The Bedouins, with few exceptions, 695 784 believe in the effectiveness of the oath of God. The rationale is that no man is willing to lie and suffer the wrath of God. The curse which results from a "bad oath" usually takes the form of an accident or misfortune to the swearer or a member of his family. The Bedouins believe that divine sanction operates not only against the one who makes a bad oath, but also against the one who bears false witness against another and causes him to take the oath.

process of conflict regulation is ritually sanctioned and the political order sacralized in a public way at the conclusion of litigation when the parties involved and the 'aqila read the Fatiha (the first sura of the Quran). For the Bedouins, the 'awaiyid is the enactment of the word of God, and the man who follows the 'awaiyid follows the commandments of God. One 'aqila speaking of the final authority which directs Bedouin society said this:

> God knows all things. God made the world and gave man a brain with which to think. Therefore, he gave man two choices: the good, and the bad. If a man follows the good, he does not steal, kill, or lie. God gave us Muhammad the Messenger, and he taught the ignorant to follow the word of God. You are an educated man, and so you must choose the good path and follow it. I do not read but I follow the Quran.

It follows, then, that "the good man" represents an important Bedouin cultural ideal which is legitimated by reference to the sacred. The practice of this ideal leads to "the good society." Another 'aqila, in reply to my question concerning the definition of a "good man," answered:

> A good man should follow God, and through this he will be a perfect man because such a man could make no mistakes. You could find no better person than this. The good man fasts, prays, makes the pilgrimage, and helps the poor. He avoids stealing and lying; these are the most important things to avoid . . . All men aim to do good. Some men think that they are doing good, but they cannot tell good from bad: this is the origin of badness . . . A man aims to do good so that the Arabs will thank him for it. The Arabs (i.e. the man's fellow Bedouins) will say that he is doing good and that he is following the good path.

121 first, the government may enter into conflict cases which
681 are judged to be out of control and involving the larger tribal
692 units; secondly, litigants, whether exercising internal or
648 external political relations, have the right to take their
[626] case to a rajal khair. Both exceptions represent informal processes of social control in al-Qasr: the first case rarely happens, and the second case seems to occur quite frequently but no recordings of the settlement are made.

681 Sanctions in the Bedouin legal system conform to what
121 Radcliffe-Brown referred to as secondary sanctions: "These are concerned with the actions of persons or groups in their effects upon other persons or groups" (1952:209). Also, it
[671] would seem that Bedouin law is one of private delicts as opposed to a law of public delicts:

[692] In the procedure of a law of private delicts a person or a body of persons that has suffered some injury, loss or damage by infringement of recognized rights appeals to a constituted judicial authority, who declares some other person or body of persons within the community to be responsible and rules that the defendant shall give satisfaction to the plaintiff, such satisfaction frequently taking the form of the payment of an indemnity or damages. A private delict is thus an action which is subject to what may be called a restitutive sanction (Radcliffe-Brown 1952:213).

681 In Bedouin society, delicts are private since they involve
675 individuals or lineage groups, but the restitutive sanctions
671 to which they give rise are backed by communal consensus expressed through public approval in general, and by the twin

charters of Bedouin society, the rawaabit al-'awaaqil and the 'awaiyid Awlad 'Ali. Again, following Radcliffe-Brown (1952:212-219), sanctions expressed in al-Qasr may be considered civil as opposed to criminal sanctions since, even in the case of intentional homicide, the emphasis is upon restitution and the restoration of the "good society" rather than upon punishment. The Bedouin legal system is one which deals with private delicts, and which depends upon secondary social sanctions and ritual sanctions for the arbitration and settlement of disputes.

Since neither a dichotamy between private and public delicts nor a differential distribution of authority at the various levels of the lineage structure obtain in the uncentralized political system of the Bedouins, political action and type of sanction will be described in terms of whether or not they occur in the internal political system of the secondary or domestic group, or in the external system where interaction between secondary, primary, or tribal segments takes place.

The most striking difference between the two systems of political action rests with the fact that the lex talionis, retaliation regulated by custom, does not operate within the secondary group. In the two cases of killing between tertiary groups of 'Ailit Ma'fas and 'Ailit Lazumi already given, compensation was immediately paid: the incidents were both settled and "forgotten." In conflict situations arising in the

external system, however, the law recognizes retaliation, a life for a life. Still, even in this case, Bedouin values expressed through the 'awaiyid try to avert bloodshed and feuding by showing "the good path" and providing the means for settlement through compensation.

Just as the Bedouin accepts the 'awaiyid as a set of of ideals calculated to regulate conflict, he paradoxically claims the right to impose retaliatory sanctions as a just conclusion to conflict. One Bedouin said that the greatest sin which a man or group can commit is to accept the diiya and then take his blood-revenge and return the money. Presumably, a person or group commits no outrage if they refuse the diiya with the understanding that blood-revenge will be taken. In al-Qasr, retaliation and the 'awaiyid are mechanisms of social control and dispute settlement. A political office exists, i.e. the 'aqila which functions over the total range of political action, and the process of adjudication and compensation in the form of indemnity payment represents an institutionalized alternative to retaliation. In all cases of dispute, ritual or religious sanctions back up social sanctions. God is a third party to all conflict, and this is made manifest in the reading of the Fatiha or the oath-taking ceremony. In order to describe how authority and sanctions operate in Bedouin society, a number of examples are presented below. Some of the cases are the statements of informants about

682 the diiya: the Qinaishat paid 50 L.E., the Kamailat paid
578 50 L.E., but the 'Aishaibat, the tribe of the killer paid
619 600 L.E. Of the 600 L.E. paid by the 'Aishaibat it was
*613 distributed as follows: 'Ailit Lazumi and 'Ailit Ma'fas each paid 100 L.E. because they are rich; 'Ailit Dawlat paid only 30 L.E. because they are poor, and each pays according to their means. The 'aiela of the killer, although they are poor, had to pay 70 L.E., and the bait of the killer had to pay 300 L.E. All paid according to their means, except the killer's bait. This was a special case, it never happened before and will never happen again and this is why the killer's bait had to pay more. The killer's bait was very poor, so what they did not have they had to beg from the richer families of the tribe.

Legal Cases Pertaining to Property Rights

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*613 In general, property in al-Qasr is owned either by an individual or by a tertiary group; seldom, in these days, is
423 property held by the secondary lineage group. If we followed
*613 classic segmentary lineage theory, seeing that the tribal
182 political structure and the 'awaiyid are still functionally
• [671] intact, we might suppose that land and water possession are rights in usufruct and not of ownership. The Bedouins themselves insist that the rights to land and water are rights of ownership. They state that all of the lineage-owned land, with few exceptions, was parcelled out to tertiary groups a

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Date: 12 October 1954. There came to us (i.e. the 'awaqil) on this day, Khalid Idris of al-'Aishaibat and Yunis Abd al-Nabi of al-Kamailat. The reason for their coming is a quarrel over land rights at Wadi al-Hijnaiya. And we put distinct markers between the land of the two parties, the first, Khalid Idris, and the second, Yunis Abd al-Nabi. And the boundary passes by the distinct markers; the first is the wadi marker, the second to the sea and beside the tree, and the final marker we put east of Halima well. This is a decision between the two parties in the presence of the following witnesses:

Signatures or seals of five men.

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The case given below indicates, by the use of two documents, the process of conflict settlement involving two secondary segments of al-Qasr, one Sa'adi and one Marabit. 'Ailit al-Sulwatiyya, though genealogically not members of the Awlad 'Ali and holders of a client or vassal status in traditional times, are within the jurisdiction of the 'awaiyid Awlad 'Ali. They claim their rights under it by virtue of the fact of their residence in al-Qasr. The power of ritual sanction is clearly illustrated by this case.

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Date: 30 July 1964, Marsa Matruh. First Party: Shaikh Khalid Za'aluk al-Sulwatiyya and four relatives. Second Party: Khalid Idris of 'Ailit Ma'fas and three relatives. They are present. The cause of these two parties coming together is a quarrel over a well named Halima. Since the choice to swear the oath has been made by the two parties, Khalid Idris, the second party, will swear the oath supported by twenty-four members of his 'umraa al-dam ("blood group") to

423 619 578 691 (nizaa'a) belongs to Khalid Idris and his brothers. This happened with the satisfaction of both tribes, and this renunciation of claim is valid from today. This paper concerning the ownership of land around the well is valid from today also. And this happened between the parties: (Signatures or stamps of both parties concerned.)

(There appeared the signatures of twenty-three of the twenty-four men who were to have sworn the oath.)

Only twenty-three oath-takers were present: 30 July 1964. I, Shaikh Khalid Za'aluk, agree on the signatures of only twenty-three oath-takers. (Signature of Khalid Za'aluk.)

648 •671 578 We have mentioned that the 'awaiyid prevails in al-Qasr, but have also noted that where the security of the desert is threatened the government is likely to intervene. The government enters tribal conflict in al-Qasr with the tacit approval of the Bedouins. As one informant remarked: "The 'awaiyid is the best way to handle problems, but the police will handle what the 'awaiyid cannot."

423 691 578 619 648 *[613] [634] Date: 1964. Case: Quarrel between al-Afrad ('Ali Abyad) and 'Aishaibat ('Ali Ahmar) over water rights. Many members of both tribes took part in this conflict. The government had to intervene: they formed a peace committee made up of all the 'awaaqil of both tribes and the 'umda and shaikh from each tribe.

423 each tribe. It was decided that the water which flows through
691 the wadi after the rains should be divided equally between the
578 two tribes, and that no one should be stopped from using the
619 water. Had not the government intervened in this conflict,
648 and had not they collected all of the weapons from the Bedouins, this problem would have resulted in the death of many men and even greater problems.

674 Theft is condemned by the Bedouins: "Everything in
685 the desert is loose. We must punish the thief quickly and severely." It is a fact that the man who goes to steal and
[682] accidentally kills in the act will have judged against him
[829] the full diiya, i.e., the amount for intentional killing. On the other hand, the people of al-Qasr insist that "Bedouins do
•[671] not steal." But legal norms exist to sanction violations against cultural ideals. The following case shows how social and ritual sanctions operate to enforce ideals.

619 Date: 1964. Case: Quarrel between the tribe of Kamailat and
578 the tribe of 'Aishaibat over the theft of 16 L.E. Muhammad of
685 'Ailit Ma'fas was accused of stealing 16 L.E. which belonged
*613 to Ahmad of 'Ailit Idris, Kamailat. The theft occurred while the two were residing at a hotel in Marsa Matruh. There were twenty other persons in the hotel that night. The accused said: "I did not take anything."

554 792 627 [779] Suppose the donkey of A (a man present at the interview) gets into the barley of B (another man present). This is actually a serious matter since it could conceivably lead to a big fight between A's 'aiela and B's 'aiela. First, I separate them and make each go to his home. Then I get A's three brothers (his father is dead), we take a dhabiiha (lamb) and go to B's place and all eat together. After the meal, we read the Fatiha (opening sura of the Quran) together to show that all is forgiven. After the Fatiha has been read no trouble will start because this is done in the presence of the Jaraira.

[784] He explained that reading the Fatiha in bad faith would bring the same curse from God that a bad oath would bring. He also *[613] claimed that only he and the 'aqila have the authority to command men to read the Fatiha.

554 792 627 •671 'Amm Salih says that he uses the 'awaiyid as a guide in solving problems, and that it is necessary because "quarrels spread like fire, it is like fire; they spread to killing and war." He was the only person in al-Qasr who

554 792 627 671 779 577 [784] tried to conceptualize the difference between the 'awaiyid Awlad 'Ali and the Sharii'a. 'Amm Salih said that it is wrong to lie, according to both the secular and the sacred authority codes: "One who lies exceeds the word of God, and God will punish him for this. No one can know how this punishment will take place, only God will know this . . . Sometimes a car goes off the road and people will say that it is the punishment of God. But you never know because the punishment of God comes in the after-life." I asked him:

554 792 627 577 "If this is so, why may the rajal khair lie in trying to settle quarrels?" He replied:

156 the group--in effect questions a great deal about the whole
159 traditional authority structure. Blood-revenge functions as
554 a deterrent to social disorder in that it represents an
829 automatic mechanism for restoring a balance of good relations
682 in the society. Actually, Hajj 'Ali exaggerated to make a
[182] point when he spoke of the existence of "unbalanced people."
682 A person would indeed be "unbalanced" who did not take into
672 consideration the repercussions of his acts with respect to
* 613 the personal danger and the dishonor and shame it would bring
to his 'aiela and bait. Although the 'aiela members are
willing to share in the blood money for accidental or unpre-
meditated killings, it is wrong to suppose that the Bedouins
do not attempt to weigh the justifiability and culpability
• [671] in matters of killing. The very existence of the 'awaiyid
Awlad 'Ali argues against this. Obviously, the dichotomy made
between killing in the 'awaiyid, i.e., intentional and accidental,
and the concomitant gradation in compensation points to some
kind of reasonable consideration in cases of killing.

156 Hajj 'Ali is discontent with yet another aspect of
159 the traditional authority structure. He questions the logic
554 and authority represented in the oath as a sacred sanction.
695 This says something about the degree of secularization which
829 Hajj 'Ali has undergone. Although he does not say so, he
apparently favors a more secular and logical procedure for
determining a man's guilt or innocence.

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There is another objection which I have concerning our customs. I mean the case of elections. For instance, one from the 'Aishaibat and one from the Sanagra, of the 'Ali Abyad, are nominated. Then, each man must vote for the one from his own tribe. He must vote for the 'Aishaibi even if the other is the better man. But, we should consider that the best man is the man with the best qualifications. 'Umda Ibrahim, for instance, knows how to greet an official or a minister, but he does not know the 'awaiyid nor the problems of the Bedouins. His brother (who will probably be the next 'umda) is a good man and is educated, but he does not know the 'awaiyid either.

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This view contrasts sharply with the traditional stand of most Bedouins in al-Qasr, including the members of the "status group." For instance, one 'aqila voiced what is a prevalent opinion when he said:

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If a man chooses to become a political candidate against a Bedouin, he must understand that the members of the tribe should and would vote for their 'umda because he is a member of their own tribe. Even if a man is crazy and his opponent has the highest college degree, the Bedouins must vote for the man from their own tribe.

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Hajj 'Ali is modern in his evaluation of the political situation here: a politician should know the problems of his constituents rather than follow principles based on traditional relationships. His motive is not to promote the 'awaiyid as a good way of life, for we know he does not think this to be the case. Instead, Hajj 'Ali believes that in order to help the Bedouins through a period of change one must know what they are changing from. Through his negative appraisal of

2: Mohsen E,O-5 (1958-1966) 1971 MT9 Libyan Bedouin MT9
Awlad Ali

ABSTRACT

THE QUEST FOR ORDER AMONG AWLAD ALI
OF THE WESTERN DESERT OF EGYPT

By

Safia K. Mohsen

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128 The study deals with the ways in which disputes are settled within a tribal society with no contralized authority. One way these disputes are settled is through the application of a set of formal rules known as "the daraieb" or the tribal ways. These rules are kept in force through an elaborate, yet informal, judicial process in which the local political leaders play a key role.

The main focus of the study is not the rules themselves, but rather the ways they are implemented. More specifically, the study examines the ways in which judicial reasoning is related to certain realities of the social and political life of the group. Using mainly the case-study method, this relationship is examined.

The first part of the thesis provides an account of the historical and ecological features of the groups total context of action. This is followed by a rather detailed analysis of the tribal organization of the group. In dealing with the tribal organization two modes of analysis are employed. A structural form of analysis which focuses on the hierarchy of groups and subgroups by which the tribal members order themselves; and a description of these groups in terms of the processes through which they are maintained. In this context, special

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[Introductory, P. V]

2: Mohsen E.O-5 (1958-1966) 1971 MT9 Libyan Bedouin MT9
Awlad Ali

Chapter I

THEORETICAL BACKGROUND

The Comparative Studies of Law

This study is based on field work carried out among Awlad Ali, of the Western Desert of Egypt, between August 1965 and August 1966. The study deals with the processes by which order is maintained within a tribal society with no centralized authority. One way that order is maintained is through the application of a set of formal rules known to the people of the area as "the daraieb" or the tribal ways. These rules are kept in force by an elaborate, yet informal, judicial process in which the tribal political leaders play the most important part.

The main focus of the study is not the rules themselves but rather the ways in which they are implemented, or the judicial process. More specifically, the study deals with the ways in which the process of dispute settlement is related to certain realities of the social and political life of the group.

Concern with the legal systems of non-literate societies has been an interest of anthropologists since the classical monographs of the nineteenth century (Maine 1861, 1871; and Fustel de Coulanges 1864), directed the attention of anthropologists to the laws of ancient civilizations. Those monographs were followed at a later date by the work of anthropologists such as Malinowski (1926), Hogbin (1934), and Schapera (1938). In more recent years most anthropological work on legal systems has been done in Africa. Most notable among these are Gluckman's treatise on the Barotse of Northern Rhodesia (1955, 1963), Bohannan's account of the Tiv of Nigeria (1957), and Howell on the Nuer Law (1954). Other studies of primitive law

2: Mohsen E.O-5 (1958-1966) 1971 MT9 Libyan Bedouin MT9
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in other parts of the world include Llewellyn and Hoebel on the Cheyenne (1941), Pospisil's analysis of the Kapauku Papuan la (Pospisil 1958), Smith and Roberts' description of the Zuni law (1954) and Laura Nader's work on Zapotec law.

Despite this interest in the comparative study of legal institution among anthropologists, yet the fields of legal anthropology still lacks a coherent body of theory to bear upon the analysis of the institutions described. The theoretical questions represented in most of these writings seem to center around two main problems: the problem of definition, and that of methodology. With regard to the problem of definitions the various writers seem to be influenced by one or the other of two main schools of jurisprudence: the analytical school and the sociological school. The analytical school flourished in the late nineteenth century following the writings of its leader, John Austin, the British jurist. According to the analytical school law is a set of rules imposed upon society by a sovereign will. The picture is that of a supreme authority standing high above society and issuing its command downwards. This supreme authority is the creator and the ultimate source of law. These views are exemplified in Austin's famous definition of law as "a rule laid down for the guidance of an intelligent being by an intelligent being having the power over him" (1885: 316-7). Since the will of that political superior has to be exact, the only way to express it, according to Austin, is by means of legislation. According to the views of this school, the existence of a supreme authority is a prerequisite to the existence of law. Any social rules of observances existing before or without the issuing authority are not considered law. This excludes from being law rules which were not enacted such as the British common law, as well as all forms of primitive customary law.

Later, members of the analytical school shifted the emphasis of their definition of law from its enactment by a supreme authority to its enforcement by that authority. Salmond defined law by reference to a court. Law, according to him, is "the body of principles recognized and applied by the state in the administration of justice" (1946:41). Gray, another member, went even further to deny the name, law, to a statute until it has been used as a basis of decision by the court (1921:82). Similarly, Diamond, who has contributed to the study and appreciation of 'primitive' law, hardly goes beyond arguing that societies without courts have no laws (Diamond 1935).

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The influence of the analytical school on the anthropological writings on law is reflected in two ways. In the first place, it led some writers to maintain that since primitive societies lacked a supreme authority in the Austinian sense, they had no rules that may be called 'legal' and that among these societies "custom is the King" (Seagel 1941:iii). In the second place, the concept of the court as stated by members of the analytical school seems to influence to a greater or lesser degree the definition of law by many anthropologists, a point which will be discussed later in the chapter.

The sociological school of jurisprudence came as a reaction against limitations inherent in the analytical school with its glorification of the supreme will. According to the views of this school, law develops within society of its own vitality. It is not an artificial creation of a supreme will but is spontaneous and independent of any formal authority. These views do not exclude the notion of enforcement of law by a supreme authority which becomes necessary as the society reaches a certain level of complexity, but unlike the analytical school, the supreme authority in the latter case is not the creator of law but a creation of it.

The movement was led by Von Saveigny, the French jurist who viewed law as a rule existing for the purpose of regulating the actions of the

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individual in the interest of the whole community (1937). He regarded law as one of the many factors of the morphology of society. Roscoe Pound continued that tradition in his famous article, "The Scope and Purpose of Sociological Jurisprudence" (1910-11), in which he viewed law as "one side of the process of social control...a task or great series of tasks of social engineering." The purpose of law, according to Pound, is to eliminate friction and waste in the satisfaction of the human needs (1910-11;591-619).

To turn from jurists to anthropologists, we find the list of those who subscribe to the sociological view quite extensive. To try to enumerate them would be a very lengthy endeavor. Malinowski states that law and order arise out of the very process which they govern. He sees laws as existing in all human societies and attributes the failure of the analytical jurists to perceive the existence of legal systems among primitive societies to the faulty habit of identifying the legal system with the person or organ possessing the power to make laws and enforce them. He defined law as a body of binding obligations, regarded as a right by one party and acknowledged as a duty by the other, kept in force by a special mechanism of reciprocity and publicity inherent in the structure of their society" (1926:58). Radcliffe-Brown (1933), Lewellyn and Hoebel (1941), Hoebel (1961), Bohannan (1957) and Gluckman (1955, 1965) to give examples, all view law as an aspect of the society independent of any sovereign in the Austinian sense. This does not mean that they all agree in their definition of law. For they exhibit a considerable difference in their views. The difference, however, does not stem from their view of the sociological rather than the formal nature of law, but in their attempt to separate law from other aspects of social life of the group.

The main difficulty with the sociological view of law is that it does not provide a reliable criteria by which one can differentiate between that

aspect of the social life that one may call law and other aspects. This does not pose any problem for those who use the concept of law in a very wide and general sense to man "the totality of people's culture" (Hartland 1924:191). But for later writers, who tend to take a more or less restricted view of law, the problem was there. Malinowski states that the rules of law in primitive society stand out from other social norms in that they are felt and regarded as "obligation of one party and the rightful claim of another." This, of course, gives law a very broad definition and does not really help in distinguishing law from non-law. 121 114 671

One of the most commonly used criterion is that of a "sanction" behind the legal norms. But the mere fact that legal norms have sanctions behind them does not help in drawing the line between them and other norms since all norms are backed by sanctions of some kind or another. It is the kind of sanction, then, not just any sanction, that differentiates law from non-law. In other words, there are classes of sanctions that may be called "legal sanctions." For Malinowski, the loss of reciprocal relations in primitive society constituted the sufficient basis for the legal sanctions (1934). Allen (1958) maintained that legal sanctions are "completely compulsory." "No one is under an absolute compulsion to visit the barber or to wear garments " (1958:59), while, on the other hand, members of the society are under an absolute compulsion not to steal or take the life of another person. Like Malinowski's notion of the loss of reciprocal relations, Allen's concept of "absoluteness" as the basis of legal sanctions is not adequate. For even under the modern legal system, were the penalty for stealing or murder specific and clear, the individual is not under an "absolute" compulsion not to steal or kill. He still can, and the mere existence of the penal institution in modern societies is a living proof that many do violate the legal norms if they are willing to take the risk of such violation, the same risk the person takes who violates the norm 121 114 671 681

of modesty and walks naked in the streets. Some may even find it easier to accept the risk of penalty for stealing than the social sanctions for violating the norms of modesty. 121 114 671 681

But although the notion of absolute vs. relative compulsion is arbitrary and artificial as a criterion for defining legal rules, yet Allen is close to another related and widespread criterion of legal sanctions, that is, the idea of the "use of force." Hoebel maintains that "the really fundamental sine qua non of law in any society - primitive or civilized - is the legitimate use of physical coercion.... The law has teeth, teeth that can bite if need be..." (1961a:26) Pound defines law as "social control through the systematic application of the forces of a politically organized society" (1910-11:591). This definition has later been adopted by Radcliffe-Brown (1940) who considers the obligations imposed upon the individual but for which there is no sanction backed by the use or the possibility of use of physical force as merely a matter of social conventions or custom but not law.

It is evident, then, that those who used the concept of "coercion" as the basis for their distinction of law needed a further specification of the concept. For, as Hoebel has noticed, "There are as many forms of coercion as there are forms of power...and only certain methods and forms are legal" (1961:26). He states that coercion by gangsters is not legal coercion; neither is the parents' physical coercion if it is extreme in form. The essential element in legal coercion according to Hoebel, is "the general social acceptance of the application of physical power, threat or, in fact, by a privileged party, for a legitimate cause, in a legitimate way, and at a legitimate time." The privilege of applying physical force constitutes, according to Hoebel, the official element in law. The person who is recognized as having the right to exercise force is the symbol of authority. This does not mean that he has to be an official or a holder 121 114 671 681 625

of any permanent office; it is any person who is exercising the legitimate use of force. Simple as the above argument might seem, it really offers very little in refining our conception of legal sanctions. For we are still left with the question of how a person acquires the right to exercise the physical force. What gives his action the legitimacy that is otherwise lacking in other forms of coercion? In trying to deal with this problem anthropologists resorted to a concept that is used by the analytical jurists, that is, the court. There is a basic difference, however, between the anthropologists' view of the court and that of the analytical jurists. The latter see the court as the ultimate source of law: court creates the law. Anthropologists, on the other hand, tend to use the court as the source of law but as a criterion of its existence. An example of such views is Max Radin who maintained that the infallible test "for recognizing whether an imagined course of conduct is lawful or unlawful... is to submit the question to the judgment of a court" (1938:1145).

Anthropologists differed among themselves, however, on what constitutes a court. While Radcliffe-Brown (1940) insists that it must be a body of people acting on behalf of the community as a whole and therefore does not exist in all societies, Hoebel (1961), on the other hand, extends the concept to include the diffused public opinion or sentiment of the people in a given society as a kind of court that gives legitimation to the use of force by individuals or groups in the absence of a recognized body acting on behalf of the community. He sees a court in cases of self-help where the aggrieved party or his kinsmen carry on the procedures of redress without the intervention of a third party. He maintained that if the procedures are right, there will be "at least the compulsion of recognized 'legal' procedure, though the ultimate court may be the 'bar of public opinion'" (1961:25).

The concept of the court has been prominent in the writings of several other anthropologists besides Radcliffe-Brown and Hoebel. Bohannan (1957, 1964, 1965), Redfield (1964) and Pospisil (1958) all imply the existence of a court of some kind or another as the identifying mark of the existence of legal rules. In his attempt to distinguish between law and custom, Gluckman thought of law to exist "as a series of acceptable judgments of rightdoing and wrongdoing in particular cases" (1955:262). Custom and other social observances function as corpus juris and as such a basis for the judgment of where the behavior of one of the litigants in a case is reasonable or unreasonable, lawful or unlawful. As such, custom is a source of law, but not law itself. It becomes law when drawn upon in passing judgment in a given case. In commenting on a passage on the Nuer by Evans-Pritchard, Gluckman made it clear what he meant by the court. "This passage shows that even in a society where 'self-help' is the enforcing sanction, people judge situations of dispute in terms of rights and duties, and wrongs....Therefore, it seems fair to say that among the Nuer, though they have no courts, there is a process of judgment by mediators and ordinary people in which custom and morality as part of the corpus juris constitute 'sources of law' for particular decisions" (1955a:263).

The importance of the above passage from Gluckman is his distinction between the concept of the court and the judicial process, a distinction lacking in the writing of most other anthropologists dealing with the study of law. Failure to distinguish the two aspects of the legal system resulted in confusing a basic societal process with one of the mechanisms through which the goals of that process achieved in certain societies. In its broadest sense, the judicial process refers to the ways disputes are settled within society. Since didsputes arise out of the very nature of social interaction, some form of dispute settlement is found in all societies.

The form which the process of dispute settlement takes differs from one society to another. In certain societies disputes are settled through a process of informal mediation undertaken by go-betweens; in others it is by means of self-help; still in others, it is by way of court. In societies with courts the process of dispute settlements is undertaken by judges who "take and assess the evidence, examine what they regard as the facts, and come to a decision in favor of one party rather than another" (Gluckman 1965:183).

Within a given society, disputes are settled in accordance with a set of principles that reflect the basic goals and values of that society. As long as the settlement of a particular dispute proceeds according to these principles, the settlement is supported by the public opinion of that society. This is true whether the process is carried on b y means of informal mediations or through a court system. It is this public opinion as the expression of the basic societal values and not the court as a special mechanism that gives legitimation to the judicial decisions. To equate opinion with the court as Hoebel (1961) did, or to look at the court as the ultimate source of legitimation as did Radcliffe-Brown (1940) and others (Redfield 1964, Bohannan 1965), is to create an unnecessary confusion which tends to undermine meaningful cross-cultural comparisons. Whatever the differences among anthropologists with regard to the definition of the court, their main interest in the concept so far has been as a tool for the definition of law. The interest in the concept gave rise to a methodological approach which came to characterize the literature in legal anthropology, namely, the case-study approach, cases having been utilized in a number of ways by legal anthropologists. In their book on the Cheyenne, Llewellyn and Hoebel (1941) introduced the analysis of "the trouble case." This was followed by a number of studies utilizing the case study method either to

document statements concerning the substantive law of the society studied, or to abstract and elucidate that law. An example of the first technique is Howell's analysis of the Nuer court decisions (1954) where he collected a large number of court cases, cla-sified them and abstracted the substantive aspect of the native law. Gluckman's study of the Lozi (1955) represents the second technique. Smith and Roberts used the same method of case analysis to abstract certain principles of the Zuni law (1954), and Nader utilized it in her study of the Zapotecan law (1964). The list of those who utilized the case-study approach is quite extensive, and the range of the societies they studied is quite varied. But most of them share the interest in the substantive rather than in the procedural aspect of the law.

When referring to the procedural aspect of the law one should keep in mind the difference between the technical and the abstract components of procedural law. The first refers to the activities and steps involved in the settlement of disputes in the society as well as the person or body undertaking the responsibility of such settlement. The second involves a number of abstract principles reflecting the values of the society with regard to the goals of the judicial process, and which the judicial persons use as a guide in achieving a settlement or in passing a judgment of one kind or another. These are the bases of judicial reasoning. Although judicial reasoning represents one of the most interesting and important aspects of the judicial process, it attracted very little attention among legal anthropologists. With the exception of Gluckman and his analysis of the concept of "reasonable man" among the Lozi (1955a), no significant work has been done in this area. In dealing with the concept of the reasonable man, Gluckman was more interested in discovering universals in laws than in the process of judicial reasoning as such. He implied that an

element of reasonableness is a universal principle in any judicial logic. Nadel reacts to Gluckman's implication of the universality of the concept suggesting that it is valid only in certain contexts, and that the cases reported by Gluckman from which he abstracted that concept are minor ones. Nadel maintained that the principle seems inadequate in major crimes such as homicide, witchcraft or assault. "If I am right, the Lozi would, in these situations, discard their guiding fiction of 'reasonable man' for the sharper dichotomy of things simply lawful and unlawful, permitted and forbidden" (1956:162).

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METHODOLOGY

One of the characteristics of legal anthropology is the absence of a coherent body of theory that could be utilized in the analysis and interpretation of the ethnographic data. What do exist, however, in the area of the ethnography of law are a variety of what may be called "tools of analysis." These are mainly methods and orientations which help to direct the researcher's attention to a certain area of behavior which describes best the phenomenon under study. Their main purpose is to help the researcher isolate particular portions of the phenomenon he is studying and as such enables him to conceptualize the problem. A number of these tools have been employed in the present study. One of these tools is Turner's "social drama" which was employed in the analysis of the political leadership and the judicial process. Since this approach depends upon the intimate knowledge of the sequential development of a given case, or cases, over a period of time, it was quite difficult to employ it in more than that particular context. As will be apparent in the later chapters, the judicial process among the group is highly informal. Most of the disputes are settled by means of mediation which is done behind the scene and with a great deal of secrecy.

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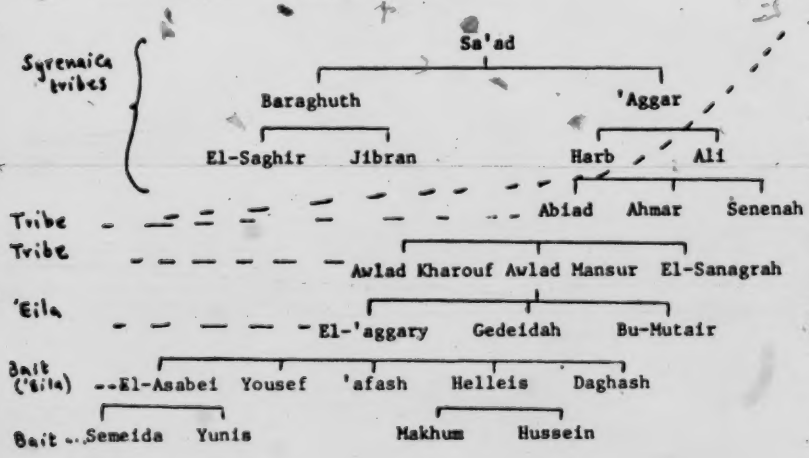
121 619 671 [643] There is no paramount chief of the tribe at the present time; yet, the unifying force is the recognition by the group of the tribal law, the Daraieb, as a binding set of rules and as the regulator of behavior within the area. In these terms, Awlad Ali are a clearly delimited group, and it is in terms of the jurisdiction of these rules that Awlad Ali are treated as a unit for administrative purposes by the Egyptian government. Viewed this way, Awlad Ali will be defined as those who recognize and abide by the Daraieb or the customary law. This includes the Murabiteen tribes [563] as well as all those who became part of the tribal organization of Awlad Ali by means of Iktitab. Since the territorial jurisdiction of the Daraieb is limited to the Western Desert of Egypt, those groups and individuals of Awlad Ali origin who have moved on a permanent basis from the area will be excluded from the group. Groups and individuals who live in the area but are not part of the tribal organization of Awlad Ali are not subject to the Daraieb.

619 173 Awlad Ali of the Western Desert of Egypt are an offshoot of the Cyrenaica tribes who in turn believe themselves to be the descendants of a unique ancestress Sa'ada.



619 groups were expected to help. For these reasons the Sa'adi tribes com-
619 peted and even fought among themselves for the newcoming Murabiteen
721 groups which continued to migrate into the area, escaping the strong dominance of the Cyrenaica Bedouins. Many of the major tribal wars which occurred in the area before the turn of the century had as their major cause the competition over the Murabiteen.

619 As a vassal group the Murabiteen tribes are kept in an inferior
778 position. This inferiority has certain manifestation, the most obvious
184 of which is the deprivation of the Murabiteen of the right of "nazala"
682 or refuge. When a person is killed the killer and his kin unit seek re-
778 fuge at a neutral tribal segment, and for a period of twelve months they
613 are safe from the revenge of the victim's kin group. The victim's family
671 cannot follow them to the refuge place, for to do this is to violate one of the basic principles of Awlad Ali law. The philosophy behind the rule of "nazala" is to give time for "the blood to cool off" as one of the informants described it. It also gives the host group a chance to start immediate negotiations with the victim's group to settle permanently the dispute. As soon as the murderer's group takes refuge, which is done either by moving along with their tents and flocks and settling in the locality of the host group or symbolically by having the head of the host group send one of his sons or male relatives to pitch his tent in the locality of the murderer's group, the head of the host group contacts the victim's group, informs them that he has been chosed by the murderer's group in accordance with the right of nazala, and asks for their permission to grant his protection to the murderer's group. To ask for the permission of the victim's group is a matter of formality since, by custom, they cannot refuse to grant this permission except on one single ground:

613 578 672 671 681 Another factor which led to the need to formalize the rules of the Amar was the increase in the kind of disputes for which there is no provision in the customary law of Awlad Ali. Such disputes arise mainly out of situations which are relatively novel to the area. A large number of these situations involve the relationship between the tribal population and the government authorities recently taking a major part in managing the affairs of the area. There were no rules in Awlad Ali law to guide decisions in cases involving financial liability of a member of the Amar in cases such as confiscation of smuggled goods, destruction of government property, or false testimony leading to the conviction of a fellow tribesman by the government authorities. The list of cases such as these is rapidly increasing. Many members of the Amar refuse to share in the payment of liabilities arising out of such cases on the basis that since no provision has been made in the customary law of Awlad Ali, then the Amar as a whole should not take corporate responsibility for such actions. They assert that corporate responsibility of the Amar is the exception rather than the rule and therefore, where there is no specific rule, the responsibility is an individual one. Others insist that it is the corporate responsibility of the Amar in such matters that maintains the Amar as a group and gives incentives to the members to retain their membership in the Amar, and therefore, should be the rule rather than the exception, covering any form of liability unless individual responsibility is specified.

613 672 675 This made it essential to specify in some kind of formal statement which liabilities are to be considered collective for which the Amar has to pay as a corporate unit and which are to remain as individual responsibility. This is done either by listing the cases of individual

613 responsibility, leaving any other situation a collective responsibility,
672
675 or by specifying the cases of collective responsibility, implying that all other responsibilities are as a rule individual ones. The Amar paper of the Aggary, for example, chose to list offenses for which the Amar is not responsible, leaving the rest of the liabilities to be covered by the Amar as a whole. This is not always the case. In some papers offenses for which the Amar is responsible are the ones listed leaving the general rule as the non-responsibility of the Amar.

613 It is in this respect that the Amar papers are considered an im-
671 portant source of legislation. Although the new rules incorporated in
675 an Amar paper start with the limited applicability to members of the Amar, yet, as time passes and as these rules affect the relationship of the Amar members to outsiders, one rule may acquire a wide practice and become part of the customary law itself. An example of the point in
613 question is the rule regulating the payment of the bloodmoney in cases
671 where the murderer is tried by the state courts for the same crime. In
675 cases of arrest of the murderer by the government, only half the blood-
682 money is paid and the other half is withheld until the trial is over. If the killer is acquitted by the court, then the other half becomes immediately due for payment. If, on the other hand, as mentioned before, the killer is convicted, half the bloodmoney is postponed until the person completes his sentence and is released unharmed and with his full senses. If he dies in prison or sustains an accident which affects his physical or mental capacities, the rest of the bloodmoney is automatically dropped. This rule was first included in a number of Amar papers, especially those of the Eilat of Awlad Kharouf tribe. In less than twenty years since it

613 671 675 682 first appeared, the rule has become a practice so common that other Amars find it unnecessary to specify it in their own papers.

Another new rule which is in the process of acquiring a great amount 613 672 675 of consensus among the tribal population of Awlad Ali is that of the responsibility of the Amar for the payment of the lawyer's fees for members [693] [695] of the Amar who are tried by the government (Article 13 of the Aggary papers). Another less agreed upon rule is that of the responsibility of 613 672 675 the Amar for the financial losses caused by the confiscation of smuggled goods or the payment of money for the destruction of government property 439 [434] by a member of the Amar. Where smuggling is an important source of income for the group, Amar papers usually include rules making it a corporate responsibility; other Amar papers, especially those of tribal segments not deeply involved in smuggling, make it an individual responsibility, while still others leave it intentionally with no specific rule, as in the case of the Aggary Amar paper.

613 [675] The Aggary document is a relatively elaborate one. Not all Amar papers, or at least the ones I had a chance to examine, are as detailed. [131] Eilat Aggary is the largest Amar in the area of Dera'el Bahari, which extends from Alexandria 60 miles westward to the town of Alamein. The 613 distinctive characteristics of the Aggary Eila is that it is composed 563 mainly of peasant groups who joined the Aggary by means of tribal adop- 619 tion. Of the 16 Baits constituting the Aggary Amar, only three are believed to be Awlad Ali proper. The attractiveness of the Aggary for the peasant groups seeking to be adopted by the tribal population of the area may be partly explained in terms of the location of Eilat Aggary in an area relatively close to the Delta from where these groups usually migrate.

685 627 598 grudges that he had against Ta'ib when the latter dissolved the partnership which had existed between them for more than ten years, because of Rabbu's attempt to cheat Taieb in dividing the profit gained from smuggling goods. They asked Sheikh Ta'ib to be their mediator to Sheikh Hakim and his son. Ta'ib went to Hakim himself and informed him of the accusations directed against his son and asked to arrange for a "Mi'ad" or legal hearing. Hakim agreed and told Taieb that his son accepted Taieb as a mardi and would abide by whatever decision he made. After that both parties to the dispute wrote specifying their agreement on Taieb as a mardi and all signed it. (It is not customary to write the agreement on the mardi but Taieb insisted on that on the grounds that he did not trust Hakim or his son and that several times they had backed down on their promises). The Mi'ad was held and all interested parties attended. It lasted only half an hour, most of it spect drinking tea. Nobody presented his case or any facts related to it since both parties had apparently discussed it earlier with Taieb. The only one to speak was Sheikh Taieb. He stated that Hadi and his partners believed that Rabbu had informed the police which caused them to loose merchandise worth more than three thousand pounds. He also said that the accusation had been denied by Hakim on behalf of his son, after having his son swear by the Qoraan that he hadn't informed the police. Then in the traditional phrase, Taieb said, "I therefore follow the Awlad Ali Daraieb and make the judgment to the oath. Rabbu will have to take the oath supported by fourteen male members of his bait to be selected by the Geneishat." He added that he had discussed the matter with both parties before announcing it and that both had agreed to it.

685 627 578 695 671

685 627 798 695 [671] [776] The Geneishat selected the tomb of the saint where the oath was to be administered. According to the customary law of Awlad Ali, the plaintiff is the one to decide which saint is to be sought for the taking of the oath by the defendant. Each saint has his own reputation and some are said to be more effective in certain kinds of disputes. The saint selected in this case was Sidi Dmain. Sidi Dmian's tomb is in the Beheira province some 60 miles east of the area of Burg el-Arab. He is [732] [784] known to cause the blindness of those who dare to swear falsely by him, and at least four cases of blindness in the area have been attributed to [671] false oaths at Sidi Dmain. Also according to the law, it is the plaintiff who selects the persons from the defendant's kin unit who are to 685 627 support him in the oath. Following this rule, the Geneishat, with the help of Hadi, selected the fourteen men from bait Asabei to swear with 695 613 Rabbu. The number of men that were required in this case was considered very conservative. The usual practice in estimating the number of sup- [803] porters in any case is done by establishing the value of the damage or compensation and dividing it by ten. The result is the number of men needed to give the oath. If there were not enough adult males in a given kinship unit to fulfill the number needed, some or all the men would have to be sworn twice or three times and each time a person takes the oath he is considered as a separate person until the number needed is met.

Following this rule, and since the value of the property confiscated in the above case was over three thousand pounds, 300 persons should have been sworn in support of Rabbuh. Since this would have complicated the matter greatly, it was agreed that fifteen men were enough. Taieb gave the justification for limiting the number to 15 that trade and, as

685 no one else could take his place. They were mainly angry at Hakim's
627 attempt to cheat them and refused Hakim's offer to substitute ten men
695 for Qudura. The temper of the meeting was becoming very tense; then
613 [578] Taieb, who was working very hard to achieve a settlement between the disputants, took the Geneishat aside and tried to convince them to accept another man instead of Qudura. When he found that to be impossible, he asked them to agree to a postponement of the oath until they saw what prevented Qudura from coming as he had promised. The Geneishat agreed to the postponement because of the absence of one of the men to swear.

[691] According to Awlad Ali Daraieb, if one of the individuals to take the oath fails to show up in the saint's tomb for any reason or if he comes but refuses to take the oath, the whole case for the defense fails, and the judgment is awarded automatically for the plaintiff. In this case the Geneishat were entitled to immediate compensation for their confiscated goods. Nobody knew the reason that led the Geneishat to forfeit their right to immediate compensation and to give Hakim and his son a second chance despite their intense dislike for the latters. Some attribute this to the skill of Taieb and the respect he commands among all tribes. Others believe the Geneishat movement to be a reciprocal act to bait Asabei' as a whole which long ago had one a similar favor for the Geneishat. Still others beliebe it to be a gesture of good will on the part of the Geneishat who needed to retain a good and friendly relationship with the tribal segments on their smuggling route.

No date was set at that time for the oath. The parties as well as
685 the witnesses returned to their houses. Hakim then took Shei'eb and
627 went to visit Qudura to see why he hadn't come to the oath but Qudura
578

2: Mohsen E.O-5 (1958-1966) 1971 MT9 Libyan Bedouin MT9
Awlad Ali

CHAPTER V

MARRIAGE: A CONTRACTUAL RELATIONSHIP

593 578 A survey of all disputes occurring among the eilat Aggary in the last five years shows that more than 70% were disputes over "women," the usual phrase referring to cases involving marital relations. Disagreement over matters arising out of quarrels between husband and wife or between one of the spouses and his or her in-laws often constitute the basis for these disputes. What seems to make marriage and the 593 578 family particularly productive of conflict is the fact that although 602 residence is commonly virilocal, and the majority of the women leav- 613 ing their own families to live with the husband, the woman retains her [591] membership in her father's family after the marriage, and her agnatic group keeps an active interest in her, even after she is married. Marriage then brings face to face the interests of two groups. These interests affect the relationship between the married couple; and, more importantly, the relationship between the latter affects the interests of their respective groups. This, in many instances, leads to direct conflict between the two groups.

581 The position of the Awlad Ali daraieb with regard to marriage rela- 671 tions is based on the Islamic law with minor modifications to suit the 585 requirements of local life. According to the Muslim law, marriage is 675 a civil contract affected by the request of one party and the agreement of the other. No witnesses are needed for the legalization of the marriage, according to some of the Shi'a sects, although the Sunni schools of Muslim jurisprudence insist that two adult male and two adult females

581 are necessary for the validation of the marriage contract. Modern
585 legal systems which took as their basis the Islamic law of marriage
671 and the family further required the registration of the marriage con-
675 tract for the marriage to be legal.

584 The request and necessary response forming the marriage are sup-
585 posed to be carried on by the parties involved. However, if either the
429 groom or the bride is not of age, or is mentally unqualified, the trans-
593 action is carried on by his or her guardian, or "wakil." The wakil is
the father, unless he is dead or an invalid, in which case the brothers
[604] become the wakils. If the person has no brothers, then the uncles be-
[184] come the wakil in the order stated. According to certain Sunni sects
in Islam, a woman marrying for the first time is always represented by
her wakil, even if she is of age. The assumption is that a woman who
has never been married does not have the experience that enables her to
enter into any kind of legally binding relationship such as marriage.

585 Following the original Islamic idea, marriage among Awlad Ali is
675 an oral agreement between the groom or his father and the guardian
593 (wakil) of the bride-to-be (her father, if alive, or her closest male
429 kin in the following order: her brothers, her uncles, her grandfather).
[604] A religious man is sometimes asked to perform the marriage, although it
585 is not required. Some persons might invite a member of the Murabiteen
792 tribe or holy men to witness the marriage on the basis that his presence
[619] gives "baraka," or blessing, to the marriage. Before the application of
[718] the State legal system to the area, marriage contracts were not regis-
585 tered. In recent years, however, and with the increased mobility of
656 the tribal populations, more and more marriages are being registered in
197 the administrative districts. Still, according to the unofficial estimates,
[675]
[634]

584 husband or his father pays the woman's father the bridewealth, or mahr.
583 In exchange for the mahr, the husband expects his father-in-law to outfit his daughter with such items as rugs, blankets, and a few other household items, like cooking pots, serving dishes, and a metal or wooden chest [422] to keep her clothes in. These items become the private property of the wife, but the husband has the right to use them. In addition, the man 581 expects to gain certain rights to the woman. The customary law of Awlad 671 Ali gives the husband three basic rights over his wife: the right to her 585 sexual services (including the right to bear him children); the right to her labor in domestic activities; and the right to her obedience. Of the three rights, the first is the most exclusive. Not only doesthe husband have a complete monopoly over his wife's present sexual services, but he also has the right, if the girl has never been married before, to be the [583] first to use such services. If he discovers that she is not a virgin, he can send her back to her father and get back his mahr.

581 The other two rights are not as exclusive. The husband's right to 585 his wife's domestic labor does not prevent her from occasionally helping 593 out in her father's or brother's household, especially if they live nearby. Finally, the husband's right to be obeyed by his wife is always subordinated to that of her father, who retains the ultimate authority over his daughter.

682 If the woman is killed or injured, the husband is deprived of all 683 or some of her services, depending on the seriousness and the permanence 581 of the injury, and therefore is entitled to compensation. The right of 585 avenging the woman's murder remains, however, that of her family, since 593 she is still a member of that family.

581 Marriage does not deprive the woman of some rights of her own.
585 The customary law gives the wife three basic rights corresponding to
562 those of the husband's sexual services, domestic work, and obedience.
671 Corresponding to the first of these, the wife has the right to have a normal sexual life with her husband. This right, however, is not an exclusive one, since the husband can marry more than one wife. A woman
585 can be divorced from her husband without having to return the mahr if
586 she claims that the husband is unable to perform his sexual duties. In
593 such cases, the marriage is usually dissolved quietly. In certain rare instances, the husband may deny his wife's accusations. If both insist
585 on their stand, one or both may ask to be submitted to "bait el-shana'a,"
586 or house of the dreadful deeds. Reports are extremely vague about the
593 exact procedures involved in this case. Some informants stated that the
627 married couple would live in a tent without sidewalls so that everybody could see what goes on inside. Most informants, however, insist that it merely means that the couple move their tent near that of a respectable man whose word is believed and honored. This man is supposed to keep a close watch on the couple's activities, by listening or looking through holes in the tent. His verdict determines the future of the marriage.
[583] If the wife is justified in her claim, the husband is forced to divorce
[681] her and to forfeit his mahr. If, on the other hand, the verdict is for
[558] the husband, he not only can divorce her and get back the mahr, but is also entitled to kabara, or compensation, for his injured pride. There
[114] is no case of bait el-shana'a in the area during the time of the field
[178] work, and most people insist that this practice is something of the past
[583] when the mahr was relatively high and was paid in livestock, in which

683
682 feet after that and left." It seems that later the wound got in-
672 fected. Six months after the incident, Selouma was taken to the
[578] hospital with an infected wound, and three days later he died from
that infection. Selouma's son, Ali, demanded that Muftah pay a
full bloodmoney (L.E. 400) for the death of his father, since the
death was directly caused by the wound inflicted by Muftah. Muftah
denied the charges and claimed that the infected wound which caused
the death of Selouma was not the one inflicted by the stone. Media-
683
682 tions continued for some time, and when no agreement was achieved,
672 the aqilas of the two baits to which the parties belonged declared
695 that the decision should be made by the oath which Muftah had to
613 take if he insisted on his claims that the wound was not caused by
his action. Since the case involved the life of a man, Muftah had
to be supported in his oath by fifty-five adult male members of
[671] his 'amar, or 'eila. In accordance with the Daraieb, the selection
[778] was done by members of Selouma's Bait who also selected the tomb of
the saint where the oath would be undertaken. On the date the oath
was to be taken, the disputing parties, as well as all the notables
of friendly tribal segments who were invited to witness the oath,
went to the tomb of the saint. As they started with the procedures,
[784] two of Muftah's cousins who were to support him in the oath and his
uncle refused to swear on the grounds that they were not sure that
Muftah was telling the truth and therefore could not subject them-
selves to the supernatural hazards of taking a false oath. Attempts
by other members who were to support Muftah were made to force the
three men to swear, since their refusal meant that the bloodmoney

684 682 the husband, who reached for his gun and fired at Goma'h. Three days later the latter died in the hospital from the gun wound.

684 682 672 The case was investigated by the police and brought to trial, but the case was dismissed as justifiable homocide by reason of self defense. The tribal proceedings, however, required Ghenewa to pay the bloodmoney for intentional homocide, since the weapon used was a gun. Out of the L. 400 bloodmoney, the sum of L. 20 kabara for committing adultery with the wife was deducted. None had questioned the right of Ghenewa to kill Goma'h in the process of defending himself.

671 672 In his essay on "The Early History of Malice Aforethought" in English law, Maitland discussed the "utter incompetence of ancient law to take note of the mental elements of a crime" (1911:327). This statement seems to apply to certain aspects of the tribal law of Awlad Ali. If one causes the death of another, even accidentally, he is liable to

671 672 171 compensation. This attribute is not restricted to Awlad Ali law, for it has been documented by a number of other studies. Peristiany found this to be the case among the Potok (1954), and Dundas documented it among the Kikuyu (1921). In his analysis of injury and liability among the Barotse, Gluckman maintained that "whatever the motivation of the killer or the circumstances surrounding the deed, bloodmoney has to be paid if a member of one grouping of kinsmen was killed by a member of some other group. The mental element seems to be irrelevant. What is important is that "murder" is committed within social relationships where blood compensation is due (1963:205). Similarly, Howell gives us one of the most comprehensive accounts of the Nuer "rule of law" and

671 672 171 the irrelevance of intention in establishing liabilities for homocide or injuries (1954).

672 682 The neglect of intention in assessing liability in cases of homocide is evident in the cases presented above (Cases 1,2,4,5 and 6), where compensation was paid although there was no intention established on the part of the offender.

[192] Awlad Ali use the Arabic word "katl" to refer to any killing. This is different from the word "mut" which means death by natural causes. They further differentiate between "katl 'amd," or intentional killing and "katl khata," or unintentional killing. Although reference here is made to "intention," yet, from the above cases it is evident that the basis of establishing that intention is from the type of weapon used in effecting the death of the victim. Intentional killings are those caused by a lethal weapon. Lethal weapons are defined as guns or knives. Death caused by a non-lethal weapon, no matter what the intentions of the offender, is defined as non-intentional, even when the circumstances of the act indicates the actual existence of an intention on the part of the offender to cause the death of the victim (as in Case #3 above). The assumption is that the use of lethal weapons, such as daggers or guns, implies intention and possibly a certain degree of premeditation, since these weapons have no other important use. Moreover, the probability of death by a lethal weapon is much greater than from other non-lethal weapons. These give the victim a chance to defend himself, a chance which he does not have in the cases of killing with a gun or dagger. In other words, Awlad Ali, in assessing responsibility for homocide, "operate with a legalistic psychology in which intention is is presumed from action" (Gluckman, 1963:207).

682 672 673 [411]

682 672 In practice, Awlad Ali do look at actual circumstances to assess the intention of the offender. Although compensation is always required, the readiness of the victim's kin group to accept a financial settlement and the final amount to be paid in a given situation is affected by the presence or absence of an intention on behalf of the offender. In assessing the actual intention of the offender in each case, the mediators rely on the circumstances of the crime as well as on the past history of the relationships between the offender and the victim. Although this actual intention of the offender does not change the payment of bloodmoney, the deceased's kin are more agreeable to the acceptance of the financial settlement if the killing is unintentional than if it is intentional and the possibility of revenge is much less imminent. Unintentional killing, regardless of the weapon used never results in blood feuds. The possibility, on the other hand, is much greater in the cases where the circumstances of the offense indicate an intention on the part of the killer to take the life of the victim. It is for this reason that the right of [678] nazala, or refuge, discussed in an earlier chapter, is resorted to only in the case of intentional killing. Of all the cases described in the chapter only in the case of the trespasser did the killers' kin group seek refuge by moving to another area where they were protected until the dispute was solved by another neutral tribal segment. It is important to note that killing in the above case was not done by a lethal weapon but by sticks, and as such was defined by the tribal law as "unintentional" as far as the formal amount of compensation required was concerned. Not all cases where the intention of the offender to kill the victim is clear carried with it the threat of revenge. The tribal [671] law takes into consideration certain mitigating circumstances, such as the role of the victim in initiating the act of the offender.

682 although the weapon used was not lethal and therefore was classified
672 as an unintentional killing, yet the nature of the crime and the obvious intention on the part of the killers made reduced payment difficult to achieve.

Another way of reducing liability and the amount of money paid in cases of unintentional killing is by taking into consideration all the intervening variables that contributed to the death of the victim and asking them to share the blame. The working of this principle is illustrated in the case of the broken rope where the rope was assigned half the responsibility for the death of the victim. It is also present in the case of the careless guest where the responsibility was divided three ways with the host paying one third, the owner of the gun paying another third, and the goat sharing the responsibility for the rest of the bloodmoney. It is interesting to note the difference in the responsibility to the owner of the gun in the above case and the owner of the rope in the case of the broken rope. The owner of the rope was not held responsible for the death caused by his rope, the same way the owner of the goat in the case of the careless guest was not held responsible for the actions of the animal. Both the goat and the rope are not dangerous things by themselves for which a certain degree of care in handling is required. If such normally harmless things cause injury or death to a person, the owner is not held responsible.

682 The situation is quite different in the case of the gun and the re-
672 sponsibility of its owner. By nature, the gun is a weapon of death, and
41 for that reason the tribal law has required certain precautions in its
67 use or handling. Among such precautions is the requirement that a guest,
594

682 as soon as he settles in the host's place, should unload the gun. In
672 addition to reducing the possibility of the gun being accidentally fired
411 and harming someone, this act expressed the trust of the guest in his
671 host and signifies the ability of the latter to protect his guest against
594 any harm. A person visiting another does not need his gun for protection and therefore must unload it. If the owner of the gun fails to take this
682 customary precaution and leaves his gun loaded, and because of that fail-
672 ure the gun causes the death or injury of a person or even damage to prop-
411 erty, the owner is held responsible for that result. The same rule applies to other deadly weapons, such as knives or daggers, as well as to animals
683 which are dangerous by nature, such as dogs. Each tent in the area has a
672 dog. Starting the first weeks in the puppy's life, he is trained to
231 guard the tent and to bark at the approach of any stranger. It is also trained to attack any intruder who comes within fifty yards of the tent unless accompanied by a member of the tent. When one goes to visit another, he usually stays away from the tent until someone from the tent hears the dog barking and comes out to get the guest. Most dogs would not attack a person as long as he is the safe fifty yards away from the tent. Occasionally, a dog goes behond the safe distance and b ites an individual passing by or a guest waiting to be let inside the tent. If the injured person is able to prove, usually by taking the oath, that he was more than fifty yards away from the tent at the time he was attacked by the dog, the dog's owner is liable to the victim for the injury inflicted by the dog. If, on the other hand, evidence shows that the victim was bitten by the dog while being less than fifty yards away from the tent, then there is no responsibility on the part of the dog's

3:Evans-Pritchard E-4, 5 (1942-1944) 1949 MT9 Libyan Bedouin MT9
(1837-1942) Sanusi

The figures for the free tribes include attached client groups, for the principal of which estimates are also given separately. The figures are taken from Col. De Agostini's monograph. The provenance of the chief Bedouin tribes of Tripolitania and of the fringes of Fazzan who are Sanusi, or sympathetic to the Sanusiya, is shown, likewise in relation to the distribution of Sanusiya lodges, on the map on page 52.

VI

Although there were in the past intertribal wars and feuds which have lasted into the present time, and in spite of the difference in status between free and client tribes, there were laws of the tents which gave every Bedouin the freedom of the whole country, and there was much coming and going between the tribes and exchange of hospitality, especially in the grazing grounds where sections with distinct territories on the plateau shared common pasturage to the south of it, and where the necessities of Bedouin life, watering at wells in transit, the crossing of another tribe's territory on the way to markets, the pursuit of straying camels, and the need to sow where rain fell, imposed a recognition of individual rights without regard to tribal affiliations or social status. Had it not been so, the Grand Sanusi could not have built on the tribal system his inclusive organization, for there would have been no foundations in culture, social structure, and sentiment, on which to build.

My inclinations as an anthropologist are to discuss at some length the tribal and kinship systems and the life of the tents, but I refrain from giving more than a bare outline of the tribal system, and I neglect altogether kinship and the life of the tents, because, however interesting detail about these matters might be to the ethnologist, a knowledge of them is, I think, unnecessary for an understanding of the development of the Sanusiya Order in Cyrenaica. I discuss the structure of the Cyrenaican tribe therefore only in so far as it is relevant to this general theme.[1]

Use of the term 'tribe' in Cyrenaica, even if it be restricted to the big free tribes, is always to some extent arbitrary for the political structure is highly segmentary. Nevertheless, though

[1] For a more general account see Savarese, op. cit., Pt. II, *passim*.

3:Evans-Pritchard E-4, 5 (1942-1944) 1949 MT9 Libyan Bedouin MT9
(1837-1942) Sanusi

tions of soil, water, and grazing. We trace the segmentation of the Qalabta alone and see that it has two divisions, the Muasa and the Mahamda. We follow the line of Muhammad alone and note that it splits into three lineages, *'Ailat* Brahim, *'Ailat* al-Mzatal, and *'Ailat* al-Shauqi (there is dispute, arising from quarrels over land, about the legitimacy of this branch). From Mzatal descend the three minor *'ailat*, al-Slailikh, al-Aqta', and Balraba'i. Following only the first line we note that *'Ailat* al-Shlailikh then divides into the various *biyut* shown on the chart, al-Habal, Mustafa, Brahim, &c., the male membership of only one of which, *bait* al-Habal, is presented in the genealogy. Where the name of an *'aila* or *bait* is different from that of its founder, it almost invariably means that the founder's nickname has been used, the Cyrenaican Bedouin having a partiality for nicknames.

Each section of a tribe, from the smallest to the largest, has its Shaikh or Shaikhs. The tribal system, typical of segmentary structures everywhere, is a system of balanced opposition between tribes and tribal sections from the largest to the smallest divisions, and there cannot therefore be any single authority in a tribe. Authority is distributed at every point of the tribal structure and political leadership is limited to situations in which a tribe or a segment of it acts corporately. With a tribe this only happens in war or in dealings with an outside authority which for its own purposes recognizes the tribe as an administrative unit. There cannot, obviously, be any absolute authority vested in a single Shaikh of a tribe when the fundamental principle of tribal structure is opposition between its segments, and in such segmentary systems there is no state and no government as we understand these institutions; and criminal law is absent and civil law exists only in a very rudimentary form. Consequently the exact status of a Shaikh can only be defined in terms of a complicated network of kinship ties and structural relations. It is only necessary here to emphasize that his social position is unformalized and that he must in no sense be regarded as a ruler or administrator. Bedouin respect their Shaikhs, but they do not regard them as superiors. Rather their influence and wealth are considered as capital to be drawn on for the benefit of whoever is in need of them. So long as a Shaikhly family can keep their prestige,

593 613 tegral part of "the one body"; events which affect a man in this context lie outside a father's field of jurisdiction. The political authority vested in a corporation acts to circumscribe the authority of persons in other fields.

Other rights stem from political membership. As a person with a defined position in a lineage corporation, a man has the right to use the natural resources of its territory. His father, although he instructs his son where to plough and when to water the animals, cannot deny him access to wells, pastures and ploughland. Economically, a son is independent to this extent, although his ability to exploit his right to the natural resources is restricted by his father's control of animals. Ultimately, however, this restriction cannot amount to stultification, because a man has the right to 613 422 735 demand food. In practice, a poor man staves off hunger with donations from this or that individual, and superficially it appears that he is dependent on the personal charity of his fellowmen. This is not so, for what is implicit is that the parcels of wealth controlled by individuals are the possessions of the corporation. It is not accidental that poor people do not go hungry. During my entire stay among the Bedouin I never saw one of them beg or [556] suffer hunger, however marginal the diet of many. Clearly, those with a surplus can and do use it for personal advantage, but the extent to which they can do so is circumscribed by the legal claims which members of a corporation have on the parcels of moveable property held by each of them.

613 421 428 Control over the wealth, whether it be animals or the procreative functions of women, rests, in the final analysis, in a corporation. Inheritance laws specify that women are not legal heirs,[8] and that all male children are [562] equal heirs. Women do, in fact, come to control property, and it is rare that [593] wealth is equally divided among male heirs. The precise details of inheritance may partly be decided by a father, but he is limited in his actions. Most of the time inheritance disputes are not of the kind which require action by the corporate group; a case which occured while I was resident with the Bedouin did, however, invoke immediate action. A man, who had left the desert to live in a village on the plateau, had only one daughter. He made it known that he intended to will his entire property to his daughter. When the news was brought to the camps of his fellow agnates, there was great consternation, because, as became clear in their lengthy discussions, the threat now existed that a substantial parcel of property would be removed from the group, a threat made real by the proposed marriage of the daughter [584] to a man of another tribe. The court would have to recognise the daughter's right to some of the property, and the members of the group reluctantly had to concede that there was little they could do about this, but they had one [593] action left to them — they decided that her nearest agnate should demand [584] her in marriage. Usually, the choice of husband for a daughter is a decision

[8] The Bedouin are Sunni Muslims, and, as Samusi, belong to the Maliki school in [795] legal matters. According to court law, women are heirs. However, actual Bedouin practice is contrary to law. For, if women were permitted to inherit, since many marry [671] outside the corporation into which they were born, they could alienate its resources.

8: Kennett G-5 (ca. 1921) 1925 MT9 Libyan Bedouin MT9

reason in three families of one tribe paying together, while the fourth is independent. Sometimes this is caused by geographical separation, at other times by personal animosity or jealousy.

The main difference between the rules of the Western Desert and Sinai is that in the West reprisals taken at the discretion of an aggrieved individual are not recognised as lawful, and are distinctly discouraged. Generally speaking, the Western Bedou is a very much more prosperous and law-abiding person than the Sinai Arab, although at the same time he retains his charm as a primitive and independent being. Occasionally a dastardly murder takes place, but public opinion is very strong not only against the murderer personally, but against all the members of his family, who automatically share his unpopularity.

In the spring of 1920 an old man, reputed to possess considerable wealth, both in camels and sheep and also in gold buried in the ground, was returning about mid-day from market riding his donkey, and one of his numerous grown-up sons was walking on foot beside him. After going four or five miles in the open desert, the old man got off his donkey, and told his son to ride for a little way while he walked. The son suddenly attacked his old father and hit him with the heavy stick he was carrying; and the poor old man died almost at once with a broken skull. There was nobody about, and the son dragged his father's body about a hundred yards, and threw it down an old dried-up cistern; then, mounting his donkey, he rode home to dinner.

That afternoon the local sheikh was told of the old man's disappearance, and as he had seen father and son leaving the market together, he had his suspicions. He traced their footsteps, picking up the tracks of a heavily laden donkey and one man walking, from near the entrance to the market place. Then, following along carefully on these tracks, he saw where the old man had dismounted. Then he saw a spot of blood and the place where the

8: Kennett G-5 (ca. 1921) 1925 MT9 Libyan Bedouin MT9

of the present defendant seemed—for a really wealthy man—to be pointless and futile. The merchant anticipated this objection by hastening to add that the receipt of the actual cash did not interest him in the least; but that he had been wondering how he could shew his disapproval of the defendant's family in some way, and had gone carefully through all his old papers and receipts with this end in view, and had triumphantly discovered the bill of debt now produced in court.

Bedouin Law and custom sometimes accept right to bloodmoney in all sorts of circumstances, when other law would recognise no claim. For example, the principle is accepted that a life lost in prison must be paid for by the informers whose information resulted in the imprisonment of the deceased. It is entirely immaterial whether the information so given to the police was wilfully false or intentionally misleading, or whether it was merely subsequently found to be incorrect. Even if the information had been true and correct in every detail, the informer is still blood-guilty from the Ourfi standpoint, although in actual practice any such claims for bloodmoney would probably be considerably modified.

Other claims for bloodmoney are also recognised occasionally, in cases of obvious accidental death, or death by misadventure or Act of God, when the interpreters of Bedouin Law cannot get away from the main principle that a life lost must be paid for. The difficulty in these cases is to determine who shall pay for it; and the lawsuits usually end in a clever compromise, in which their essential principles are duly observed, but their judgments are mitigated and modified by leniency and commonsense. The following example, which occurred recently in Mariut, will illustrate this.

A certain Arab called Ali Abu Bukr had inherited from his father large cultivation rights in the desert; and in the middle of this land was an old cistern for the collection of rain water. It had not been used for years, and was silted

8: Kennett G-5 (ca. 1921) 1925 MT9 Libyan Bedouin MT9

671 672 682 312 up with drift sand; and as it was some miles from the nearest permanent water supply, the owner of the cistern decided that it was well worth clearing out, with a view to catching and conserving the next rainfall.

Accordingly he summoned all his kinsfolk, and propounded his proposition, to which they agreed. Other Arabs occupying neighbouring rights suggested that it was a very good idea, probably with a view to a simplified water supply for themselves.

671 672 682 An Arab from the neighbouring tribe called Ahmed had frequently acted as shepherd and odd-job man for Ali; and it happened that, when Ali and all his kinsfolk were assembled at the cistern, Ahmed chanced to be passing. Ali hailed him, and asked him to come and lend a hand. So Ahmed joined the crowd at the well, and assisted in getting ready the ropes and other tackle to be used.

[312] The cistern, constructed after the usual Roman pattern, was about forty feet deep, fifteen feet in diameter for the first twenty feet or so, and from there narrowed down to six or seven feet, with footholes cut in the side for the last half. One of Ali's relatives had agreed to be let down with ropes and to start cleaning out the mud and sand from the bottom. However, when the rope had been tied round his middle, and he was just going to be swung in mid-air and lowered to the ledge at half-way, his nerve suddenly failed him, and he refused to start.

Subsequent evidence was confused at this point as to exactly what happened; but it seems that one of the crowd noticed Ahmed standing with the rest, and remarked that he had had considerable experience in well digging, and suggested that he should go down. Accordingly Ahmed flung a stone down the well, and a faint splash at the bottom indicated that there were a few inches of water in it. He then organised a sort of tug-of-war among the men standing by, to test the strength of the rope. Satisfied on this point, he had the rope tied round him, and he was

8: Kennett G-5 (ca. 1921) 1925 MT9 Libyan Bedouin MT9

lowered very slowly and carefully by the crowd at the top. Here again it is difficult to ascertain exactly what happened, as the evidence was again contradictory. Apparently, when Ahmed reached the ledge at half-way, he fumbled about in the dim light for the foot holes; and just at this psychological moment the rope broke.

The ten men holding the rope at the top collapsed one on the top of another; but when they had recovered their presence of mind, they shouted down to Ahmed, to ask if he were all right. A faint voice from the bowels of the earth replied that he had fallen heavily on a stone and had had a nasty knock, but that he would be all right in a few minutes.

They then produced a spare rope for another man to go down and get Ahmed up; but they discovered that the only one they had to hand was too short by several feet. A man was sent post-haste on a pony to get another rope from the encampment a mile or so away, and when he returned after a quarter of an hour, volunteers were quickly forthcoming to go down and retrieve Ahmed. On reaching the bottom they found that the unfortunate man, either stunned by the fall or overcome by foul air, had collapsed flat on the bottom of the well, and had been drowned in six inches of water. They hauled his body up to the surface, and Ali, terrified that he might be held in some way responsible, counselled all present to bury the dead man then and there, and to say nothing about it. However, news quickly spreads; and the same day an informer came to the police post and reported the matter, and Ali was arrested and subsequently sentenced to three months' imprisonment with labour by the present writer, for failure to notify a death under unusual circumstances. (Incidentally this did not constitute an offence under Bedouin Law, but was a contravention of the Police Code and was punished as such. Hence the apparent interference in a purely Bedouin concern.)

While Ali was still serving his sentence, Ahmed's rela-

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671 672 682 694 tives lost no time in taking legal proceedings at the Ourfi court to claim bloodmoney from the owner of the cistern; and on Ali's release from prison a very long and excessively tedious lawsuit began.

The principle that a life had been lost and must be paid for was accepted without question by the court from the outset, in spite of the police enquiry, which is the local equivalent of a coroner's inquest. The enquiry had established beyond any shadow of doubt that death had been caused by misadventure, and that Ali was absolutely innocent, not only of any intent to kill, but also of any negligence whatsoever. Any other coroner's jury in the world would have returned a verdict of accidental death, expressed sympathy with the relatives, and absolved all concerned from blame; and there the matter would have ended.

671 672 682 Ali, who had already undergone three months in durance vile—which, to a wandering child of the desert, must be particularly galling—so far forgot any tribal instruction he might have had as to repudiate vigorously any responsibility either for the accident or for the restitution of the death in the form of bloodmoney. His family also, who would naturally have to share the payment, did their best to confound the issue by lodging a counter claim. They protested that the actual rope that broke was not theirs, but belonged to a third party, and that neighbouring tribes, who had approved of the project and who stood to benefit by the cistern when it was cleaned out, were conjointly responsible with themselves for any payment due.

The case dragged on unsatisfactorily for some months; the neighbouring tribes swore that no agreement existed whereby they should benefit by the cistern when completed; the question of the ownership of the rope was dropped; and eventually Ali and his family were ordered to pay a reduced scale of bloodmoney to the family of the deceased.

683 672 Sometimes these bloodmoney cases, so far from being dramatic or nauseating, are actually rather amusing.

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members of a neutral family with grazing camels, and with their help Mirtah was fetched in to the Wadi unconscious. 682 628

The case was reported to the police, but a few hours after his arrival in the Wadi Mirtah quietly died. The post-mortem examination revealed a skull cracked right across, with severe cerebral haemorrhage. In due course the Sirdani family claimed £400 bloodmoney from the Sayed family, according to the custom among the Gawabees tribe. This time, however, an exception was made. The sheikhs decided that the ordinary bloodmoney of £300 only should be paid by the Sayed to the Sirdani family, £100 in money and £200 in kind, divided into six yearly instalments of £50 each. 672

They also added a rider to the effect that they were not awarding Sanaa under the circumstances, as there was no proof of intent to kill, and that weapons such as guns or knives (which would imply premeditation) were not used. The presumption was that the Sayed family, though obviously intending to cause grievous bodily harm, did not intend to kill Mirtah. The fact that he died of his wounds automatically warranted the award of £300 as bloodmoney, but did not constitute sufficient justification for the imposition of the extra £100 as Sanaa.

In Common Law it is not always easy for the uninitiated to understand the legal value of a threat, or what proportion of the punishment for the completed action is due for a mere threat. It was singularly pleasing, therefore, to find a striking instance of a threat to shoot, and to see the attitude of the Bedouin court towards this particular offence. 671 • 683

An Arab called Abd el Kerim was tolerably well-to-do, and owned several camels, a mare, fair-sized flocks of sheep and goats, and certain cultivation rights; and he had two sons aged about sixteen and eighteen respectively. His cousin, Abd el Salam, who lived half a mile away, had four sons of ages ranging from fifteen to twenty, but he was considerably poorer in this world's goods. Abd el Kerim's sons took their camels out to graze, and inadvertently 233 685

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682 charge, which hit Towida at a range of only a few feet,
672 with fatal results.

Farag, who had divorced her two months before,
682 brought a claim for bloodmoney from Korayem; but when
672 the case was heard, Korayem denied that the accident had
695 happened in his tent. The assessors of this first court, which was held soon after the accident, demanded that Korayem should swear, backed by twenty-five men (i.e. half the full number of fifty, as Towida was a woman), that the accident did not take place in his tent. Then
• [671] followed an example of one of the very unsatisfactory points in Bedouin Law.

Korayem, who was a powerful man belonging to the Gereidat, who were in turn a powerful family, managed to persuade the court to cancel their judgment requiring the oath from himself and his twenty-five backers, and to agree to a settlement whereby he should pay £10 and be absolved from the necessity of taking the oath. The court accepted this agreement, and proceeded to examine the claims to the bloodmoney.

The Moslem Law of Divorce provides that when a man
682 divorces his wife, the decree does not become absolute for
672 three months, in order that it may be ascertained whether
695 the woman be pregnant by her lately divorced husband.
691 Towida had only been divorced two months before the accident; so the question had to be decided whether Farag
586 were legally her husband or not at the time of her death, for purposes of receiving a share of the bloodmoney. If so, he should receive one quarter; but there seems to have been some difference of opinion on this point among the assessors of the court, and the whole matter was shelved.

Seventeen years afterwards, Lataif Farag—then a man
682 of twenty-one—re-opened the case, claiming his mother's
672 bloodmoney. In support of his claim he produced three
695 witnesses. The first was Farag himself, who was prepared
694 to swear that he had seen Towida lying dead in the tent of Korayem. The second was Towida's brother, who was